IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.15 OF 1991

Association of Engineering Workers
252, Janata Colony, Ram Narayan
Narkar Marg, Ghatkopar (East),
Bombay 400 077 .. Petitioners

V/s

1. Bombay Forging Private Limited
a company incorporated and
registered under the Companies
Act, 1956, having its registered
office at C.S.T. Road, Vidyanagari
Santacruz (East), Bombay 400 098.

2. First Labour Court
having its office at Arun Chambers,
6th Floor, Tardeo Main Road,
Bombay 400 034.

3. S.N.Limaye,
Member, Industrial Court,
Maharashtra, having his office
at 7th Floor, Arun Chambers,
Tardeo Main Road, Bombay 400 034. .. Respondents

Mr.N.M.Ganguli for the Petitioner.
Mr.C.U.Siongh with Mr.S.R.Pandey for the Respondents.

CORAM: S.RADHAKRISHNAN &
S.A.BOBDE, JJ.
DATE : 29.10.2004.

JUDGMENT: (Per S.Radhakrishnan, J.)

1. By this Petition, the Petitioner Union is challenging an order dated 30th November, 1989 passed by the Industrial Court in a Revision Application confirming the order of the Labour Court.

2. The brief facts are that the Petitioner Union represents certain workmen who were employed by Respondent No.1 Company. The Respondent No.1 Company manufactures the Iron and Steel forgings for the use in automobile Industry

and has a factory at Santacruz, Mumbai. At the relevant time the Respondent No.1 Company appears to have employed over 700 employees in the said factory. It is the contention of the Petitioner Union that the workmen of the Respondent No.1 Company joined as members of the Petitioner Union in the year 1980. In the year 1984 the management of the Respondent Company was changed and one Basin Group came into the management. It is the contention of the Petitioner Union that the said management of Basin Group did not like the Petitioner Union, and to oust them the management resorted to various acts of harassment including pressurising the workmen of the Petitioner Union to leave the said Union. It is the contention of the Petitioner Union that on 10th April, 1984 some of the workers/members of the Petitioner Union were isolated by the said management from the Petitioner Union and were kept out of employment. On 10th July, 1984 the workmen belonging to the Petitioner Union appear to have put down their tools and came out of factory premises at about 1.30 p.m. It is the contention of the Petitioner Union that on the very same day viz.10th July, 1984 the Petitioner Union had given a notice under Section 24(1)(a) of the MRTU and PULP Act, mentioning there that the workmen employed in the Company would go on strike from 27.7.1984 or any day thereafter, after 14 days of the receipt of the said notice. In the annexure to the strike notice it is alleged that on 10th July, 1984 at about 1.30 p.m. some Goondas under the leadership of Mr.Thapa had attacked the workmen on duty with various lethal weapons like swords, guptis chains, pipes, revolvers, knives etc. because of which many

workmen were injured seriously and were hospitalised. It is further mentioned therein that the situation created by this assault on the workmen on duty in the factory premises by the encouragement of the management has made it impossible for the workmen to attend the factory and to perform their usual and normal duties, and as such the said notice of strike was given that they will proceed on an indefinite strike until they were convinced of their safety and peaceful atmosphere inside the factory premises.

3. Thereafter, the Respondent No.1 Company appears to have approached the Labour Court under Section 25 of the MRTU and PULP Act contending that the workmen had resorted to illegal strike and had sought a declaration that the said alleged strike was illegal. In the said proceedings, the workmen appear to have resisted the same contending that the workmen had not gone on strike though they had given the strike notice dated 10th July, 1984, but the Respondent Company itself had effected a lockout without proper notice to the workmen.

4. It appears that the Petitioner Union had also filed a complaint under Section 28 of the MRTU & PULP Act in the Industrial Court under Item 6 of Schedule II and Items 9 and 10 of Schedule IV of the said Act. It appears that in the proceedings adopted by the Respondent No.1 Company viz.in the Reference, the Labour Court by its order dated 26.12.1986 gave a finding that the members of the Petitioner Union had resorted to illegal strike from 10th July, 1984 and had continued the same till 27th July, 1984.

Accordingly the Labour Court declared the said strike to be illegal from 10th July, 1984 to 27th July, 1984.

5. Aggrieved thereby the Petitioner Union had filed a revision application before the Industrial Court under Section 44 of the MRTU & PULP Act. In the said revision application, the Industrial Court after scrutinising the record and the judgment of the Labour Court, found that the Petitioner Union had made demand on behalf of the workmen by their notice dated 10th July, 1984 and also came to the conclusion that the order of the Labour Court cannot be said to be perverse and there was no error apparent on the face of the record, and as such, the Industrial Court dismissed the revision application filed by the Petitioner Union by its order dated 30th November, 1989. Aggrieved thereby the Petitioner Union has filed the present Petition.

6. Mr.Ganguli, the learned Counsel for the Petitioner Union has sought to contend that though in fact the members/workers of the Petitioner Union had given a strike notice on 10th July, 1984, but in law they had not gone on strike and the Labour Court and the Industrial Court have erred in construing the same as illegal strike, whereas they ought to have held that it was an illegal lockout by the Respondent No.1 Company itself. Mr.Ganguli took us through the evidence as well as the Labour Court’s judgment and Order and the Industrial Court’s Judgment and order in revision application. Mr.C.U.Singh, the learned Counsel for Respondent No.1 Company contended that the Labour Court

has passed the order based on evidence and there is nothing perverse or illegal in the findings given by the Labour Court and that the Industrial Court has also rightly refused to interfere in the revision. Mr.Singh, the learned Counsel for Respondent No.1 Company has pointed out that the members/workmen of Petitioner Union did not dispute that they had factually gone on strike from 10th July, 1984 and that they had factually issued a strike notice dated 10th July, 1984 which is not even withdrawn till date. Mr.Singh has also pointed out from the evidence led before the Labour Court, especially by Uttam Budhaidas, that in paragraph No.9 of his cross-examination, he has clearly stated that he could not say that at that time he was threatened and he did not even file any complaint with the police of such threats. The said witness has also stated that he did not write any letter to the Company about the threat, and that he could not produce the copy of any letter written by the Union with regard to the threat given to him on 7th July, 1984. The said witness has also stated that he could not tell the names of the Goondas by whom he was threatened. The said witness has reiterated that he did not file any police complaint.

7. Mr.Singh, the learned Counsel for Respondent No.1 Company also referred to the evidence of one Ramesh Sadashiv Kalsulkar. In his examination-in-chief, paragraph No.5, the said witness has has stated that the workmen had gone on strike from 10th July, 1984 and on the very same day, the strike notice was also issued and in view thereof the said witness has stated that the workmen were not on

illegal strike. The said witness in his cross examination has stated that the workmen did not go to the factory from 11th July, 1984, however he has admitted that the work was going on in the factory after 11th July, 1984. Mr.Singh, the learned Counsel for the Respondent Company referred to the evidence of another witness Radheshyam Bhagwanprasad Dubey. In his cross-examination, paragraph No.6, the said witness has stated that the notice of strike was given on behalf of the workmen on 10th July, 1984 whereby the Union had informed that the workers will be suspending the work of the factory with effect from 11th July, 1984. Mr.Singh, the learned Counsel for Respondent Company has therefore contended that the Labour Court has given a correct finding that the workmen/members of the Petitioner Union had gone on strike and that the said strike was illegal inasmuch as the workmen did not allow 14 days period to lapse before factually going on strike, in the sense, the workmen had gone on strike on 10th July, 1984 and on the very same day they had given a strike notice and therefore the said strike was illegal. Mr.Singh, the learned Counsel for the Respondent Company has further contended that, based on the evidence of the Petitioner Union itself, one cannot say that the finding given by the Labour Court is perverse or based on no evidence.

8. Having heard the learned Counsel for the parties and after having perused the Judgment and Orders of the Labour Court and the Industrial Court, we find that there is ample evidence to indicate that the workmen/members of the Petitioner Union had suspended the work from 10th July,

1984 and that they had given a stike notice on the very same day. Admittedly, the workers of the Petitioner Union did not wait for 14 days period to lapse before factually going on strike. Over and above, there is no evidence at all indicative of force being used or threats being given to the workmen. On the contrary, one of the witnesses clearly stated that the work was continuing in the said factory. Therefore the plea of the Petitioner Union that there was illegal lockout by the Respondent No.1 Company itself, cannot be sustained. The findings of the Labour Court that there was illegal strike from 10th July 1984 till 27th July, 1984 cannot be faulted with as the same was based on evidence. There is no error apparent on the face of the record and there is no perversity in the judgment and order of the Labour Court. Similarly, we do not find anything perverse or illegal in the order of the Industrial Court in refusing the revision. Under these circumstances, Petition is totally devoid of merits and hence Rule stands discharged. Petition stands dismissed.

(S.RADHAKRISHNAN,J.)

(S.A.BOBDE,J.)